SUPREME COURT, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1958

No. 297

GRAHAM-WHITE SALES CORPORATION, a foreign corporation, and D. ALLCOTT KELLY as President of Graham-White Sales Corporation,

Appellants,

vs.

THE PRIME MANUFACTURING COMPANY, a corporation,

Appellee.

On Appeal from the Supreme Court of the State of Wisconsin

MOTION TO DISMISS

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INDEX

Page

Motion to Dismiss 1

Opinions Below 2

Jurisdiction 2

Statute Involved 2

Questions Presented 2-3

Statement of the Case 3-9

Reasons for Granting the Motion to Dismiss..... 9-19

1. The judgment appealed from is not "final" 9-11
2. The federal question sought to be reviewed was not timely or properly raised 11-13
3. The federal question was not passed on by the Wisconsin Supreme Court 13-16
4. A substantial federal question is not presented 16-19

Conclusion 19

AUTHORITIES CITED

Cases

Bailey v. Anderson, 326 U.S. 203 (1945) 13

Bryant v. Zimmerman, 278 U.S. 63 (1928) 15

Capital City Dairy Co. v. Ohio, 183 U.S. 238 (1902) 11

Charleston Ass'n v. Alderson, 324 U.S. 182 (1945) 13

Cole v. Violette, 319 U.S. 581 (1943) 10

Page

Dahnke-Walker Co. v. Bondurant, 257 U.S. 282 (1921) 16

Department of Banking v. Pink, 317 U.S. 264 (1942) 9

Dostal v. Magee, 273 Wis. 228, 77 N.W. (2d) 604 (1956) 12

Edelman v. California, 344 U.S. 357 (1953) 13

Fry Roofing Co. v. Wood, 344 U.S. 157 (1952) 8

Grayson v. Harris, 267 U.S. 352 (1925) 8

Herndon v. Georgia, 295 U.S. 441 (1935) 11, 12

Honeyman v. Hannan, 300 U.S. 14 (1937) 14

International Shoe Co. v. Washington, 326 U.S. 310 (1945) 13, 14, 15, 18

Live Oak Ass'n v. R. R. Comm., 269 U.S. 354 (1926) 11

Lynch v. New York, 293 U.S. 52 (1934) 11

Market Street R. Co. v. Comm., 324 U.S. 548 (1945) 10

McGee v. International Life Ins. Co., 355 U.S. 220 (1957) 18

Meagher v. Minnesota Thresher Co., 145 U.S. 608 (1892) 10

Memphis Gas Co. v. Beeler, 315 U.S. 649 (1942) 13

Mutual Life Ins. Co. v. McGrew, 188 U.S. 291 (1903) 13

Natural Gas Co. v. Oklahoma, 344 U.S. 62 (1948) 10

Page

Oxley Stave Co. v. Butler County, 166 U.S. 648 (1897) 11

Palmer Oil Corp. v. Amerada Corp., 343 U.S. 390 (1952) 16

Perkins v. Benquet Mining Co., 342 U.S. 437 (1952) 18

Philadelphia & Reading C. & I. Co. v. Gilbert, 245 U.S. 162 (1917) 16

Portland R. Co. v. Railroad Commission, 229 U.S. 397 (1913) 8

Radio Station WOW v. Johnson, 326 U.S. 120 (1945) 12, 14

Richfield Oil Corp. v. State Board, 329 U.S. 69 (1946) 9-10

Saltonstall v. Saltonstall, 276 U.S. 260 (1928) 13

Saunders v. Shaw, 244 U.S. 317 (1917) 12

Zandig v. Baldwin, 166 U.S. 485 (1897) 11

Zucht v. King, 260 U.S. 174 (1922) 16

Statutes

U.S.C.A., Title 28, § 1257(2) 2, 3, 9, 10, 13, 15

Wis. Stats. (1957), § 262.01 9

Wis. Stats. (1957), § 262.05 9

Wis. Stats. (1957), § 262.09(4) 2, 4, 16

Wis. Stats. (1957), § 274.33(3) 4, 9

Miscellaneous

Annot., 146 A.L.R. 961 14

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MOTION TO DISMISS

Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the appeal of appellants from the judgment of the Supreme Court of Wisconsin entered February 4, 1958 be dismissed on the grounds that (1) the judgment appealed from is not final, (2) the federal question sought to be reviewed was not timely or properly raised, or expressly passed on, and (3) the question is so unsubstantial as not to warrant further argument.

OPINIONS BELOW

The opinion of the Wisconsin Supreme Court is reported in 3 Wis. (2d) 156, and in 87 N.W. (2d) 788, and is reprinted in the Appendix to the Jurisdictional Statement. The opinion of the trial court is not reported but is reprinted in the Appendix to the Jurisdictional Statement.

JURISDICTION

Appellants attempt to invoke the jurisdiction of this Court under 28 U.S.C. § 1257(2). For the reasons set forth herein the appeal should be dismissed. In addition, this is not an appropriate case for certiorari.

STATUTE INVOLVED

The pertinent provision of the Wisconsin statute in point (Wis. Stats. (1957), § 262.09(4)) is set forth in the Jurisdictional Statement on page 3.

QUESTIONS PRESENTED

If a federal question has been properly raised and presented the Jurisdictional Statement does not accurately state it. We restate it as follows:

> Does submitting a foreign corporation to state jurisdiction by upholding service of process upon its President, who is a resident of and who was personally served in the state, violate the Due Process Clause of the Fourteenth Amendment when at the time of service, the corporation (1) maintained an office in the state occupied by its President and his personal secretary from which it was ready and equipped to accept and act upon any order or busi-

ness which might come into the office, (2) placed and received many local and long distance phone calls and telegrams through the office phone listings, (3) advertised that all business inquiries should be directed to said office, and the office was not closed nor had the business activities ceased at the time summons was served?

In addition, appellee by its motion to dismiss raises the following issues:

(1.) Is the judgment appealed from "final" for the purposes of appeal under 28 U.S.C. § 1257(2)?

(2.) Was the federal question sought to be reviewed timely and properly raised?

(3.) Was the federal question passed on by the Wisconsin Supreme Court?

(4.) Is a substantial federal question presented?

STATEMENT OF THE CASE

A restatement of the case is required by the incomplete presentation of appellants. Hereafter appellants will be sometimes referred to as "Sales Corporation" and "Kelly" respectively, and appellee as "Prime".

This action was commenced by Prime, a Wisconsin corporation having its principal place of business in Milwaukee, against Kelly, the Sales Corporation and others by service of summons on Kelly, as an individual and as President of the Sales Corporation, on May 24, 1957 and on June 3, 1957 (Appel. Brief p. 4). On June 7, 1957 appellants appeared specially and moved to quash service of summons in so far as it purported to confer jurisdiction over the Sales Corporation, a Virginia corporation

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(R. pp. 41-42). The trial court on August 22, 1957, after hearing testimony and receiving affidavits and other evidence, entered an order denying the motion to quash (R. p. 37).

Thereafter, pursuant to Wis. Stats. (1957), § 274.33(3) providing that an order which "decides a question of jurisdiction" is appealable when made, appellants appealed to the Wisconsin Supreme Court, which affirmed (Appel. Appex. p. 18). Both the trial court and the Wisconsin Supreme Court held that the activities of the Sales Corporation in Wisconsin were sufficient to constitute "doing business" for the purpose of service of process under Wis. Stats. (1957), § 262.09(4) (Appel. Appex. pp. 18, 19).

Prime has for many years engaged in the business of selling equipment to various railroads. For a long time prior to March 15, 1957, Kelly was employed by Prime as "assistant to the president" and was in charge of selling said equipment (R. pp. 46, 78). On March 15, 1957 Kelly terminated his employment with Prime (R. p. 81).

The Sales Corporation was incorporated in Virginia in August of 1956 and Kelly at the time of service was President and a director (R. pp. 42-43, 48). The initial and only business of the Sales Corporation was the selling of railroad and related equipment (Ex. C., R. p. 58; Ex. D., R. pp. 59-60; Ex. F., R. p. 165), such equipment being exactly the same as that sold by Prime under Kelly's supervision (Ex. G., R. p. 66). To further this purpose, Kelly and the Sales Corporation by a lease dated August 20, 1956 rented a suite of offices in a building at 759 North Milwaukee Street in Milwaukee, Wisconsin for an original term of three years from October 1, 1956 to September 30, 1959, with option to renew for successive

three year periods (R. p. 95; Ex. 7, R. p. 99). Prior to the time of service of process the only known physical office space rented and occupied by the Sales Corporation was that located in Milwaukee (Ex. F, R. p. 165; R. p. 79).

Sometime after January 1, 1957 the suite was occupied by personnel and a typewriter and some office furniture and crates were moved in (R. pp. 96-97). At the time summons was served, the furniture was still there, the rent was being paid and the lease was in full force and effect (R. p. 97). The only known employees of the Sales Corporation at that time were Kelly, its President, and Miss Peplowski, personal secretary to Kelly, both of whom resided in Milwaukee and worked in said suite, and both former employees of Prime who went directly to said suite from the employ of Prime on or shortly after March 18, 1957 (R. pp. 44, 50, 52-53, 83).

On February 1, 1957 telephone service was installed in the leased premises with listings indicating several office phones and a business address of 759 North Milwaukee Street, and directions to call Kelly's residential listing (WOodruff 2-2737) if no answer was received at the business listing. On March 21, 1957 the Telephone Company placed Graham-White Sales Company in the classified list under "Railroad Supplies". On March 25th the listing of the Sales "Company" was changed to Graham-White Sales Corporation. (R. pp. 92-93). The telephone service and listing were still in effect at the time summons was served (R. p. 93). The Telephone Company records disclosed that five local calls were made from the telephones in the office at 759 North Milwauke Street in the month of March 1957, that seventy-five local calls were made from the same in the month of April,

and that forty-seven local calls were made in May, 1957, the month summons was first served (R. p. 100).

Also, numerous long distance calls were made and received and telegrams sent under these listings during March and April (R. pp. 89-92) and May, 1957 (R. p. 88). On April 22, 1957 the Sales Corporation also put in a telephone answering service for the business listing, which was still connected as of the date of the hearing (R. p. 94).

By letter dated March 25, 1957 from Kelly, customers were advised to address all orders to Graham-White Sales Corporation, Salem, Virginia (Ex. D, R. pp. 59-60). However, an advertisement of the Sales Corporation published on March 24, 1957, and sent to the trade shortly thereafter, expressly offered the sale of railroad equipment, and expressly indicated that *all* inquiries should be addressed to 759 North Milwaukee Street, Milwaukee, Wisconsin (Ex. F., R. p. 165; R. p. 55). Of the ten offices listed, only the Milwaukee office was identified by address and telephone number, or was encircled on the advertisement (Ex. F., R. p. 165).

Kelly by affidavit stated that if any inquiries were received at the Milwaukee office he supplied information, but if anyone wanted to place an order, he directed them to be sent to the home office in Virginia (R. pp. 44-45, 82-83, 84). As to this, the trial court found (Appel. Appex. p. 20):

> "I find it difficult to interpret this to mean that the president to this newly-created corporation failed to engage in enthusiastic sales work, but, rather, referred the prospective purchaser to the Virginia office. This would scarcely be expected or reasonable for a man who for much of the previous thirty years had been in sales work."

And the Wisconsin Supreme Court said (Appel. Appex. p. 17):

> "The Sales Corporation was ready to accept, and had equipped and manned itself so that it could accept, and act upon, any order or business which might come into the [Milwaukee] office."

Kelly also alleged, by affidavit, that all activities of the Sales Corporation in the Milwaukee office, except payment of rent, ceased prior to May 15, 1957 (R. p. 44), although Kelly and Miss Peplowski were physically present in the office on May 26, 1957 (R. p. 50). The trial court, in this respect, made the following finding (Appel. Appex. p. 20):

> "Counsel for Graham-White Sales Corporation argue that the company was not doing business at the time of service, having only a barren obligation to pay rent on the leased premises after May 15, 1957. The record fails to support this position. There was no effort to close the office or end the lease. The hiring of a telephone answering service does not show an intention to abandon the office or the doing of business; on the contrary, it is consistent with the preservation and continuation of the business."

The Wisconsin Supreme Court sustained this finding (Appel. Appex. pp. 17, 17-18) as follows:

> "There is no showing that it attempted to close the office or discontinue the telephone service; both the lease and the telephone service were in effect at the time of the hearing.
>
> * * *
>
> "So far as the installation of a telephone answering service is concerned, the trial court correctly observed that the use of such a service is not indicative of an intention to abandon the office or the business, but is consistent with the continuation of the business. It is not denied that the advertisement, Exhibit F,

> was a publication 'to the trade,' as alleged in the affidavit of plaintiff's secretary; the advertisement directs that all inquiries be addressed to the Milwaukee office. There is no evidence of any publication to the trade advising that the Milwaukee office is closed and that inquiries should be addressed elsewhere. Kelly admits in one of his affidavits that he used the office and the telephone service in handling inquiries addressed there."

The above statements by the two Wisconsin courts represent findings of fact, and this Court, in the absence of exceptional circumstances not here existing, accepts the state courts' findings and conclusions of fact. *Fry Roofing Co. v. Wood,* 344 U.S. 157, 160 (1952); *Grayson v. Harris,* 267 U.S. 352, 358 (1925); *Portland R. Co. v. Railroad Commission,* 229 U.S. 397, 412 (1913). Furthermore, such findings are amply supported in the record. See, in addition to the evidence set out above, the affidavits of Vaughan, Secretary of Prime (R. pp. 46-55; R. pp. 67-71), and the affidavit of Wild, President of Prime (R. pp. 71-76). Therefore, at the time summons was served, the Milwaukee office was open for business and the Sales Corporation was ready to accept and act upon any order or business which might come into the office (Appel. Appex. p. 17).

Appellants on February 21, 1958 filed a motion for rehearing with the Wisconsin Supreme Court in which it was contended that the Court's decision "violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution" (R. p. 175). The motion was denied by the Court on April 8, 1958, without comment upon the constitutional issue raised (R. p. 197).

REASONS FOR GRANTING THE MOTION TO DISMISS

1. The judgment appealed from is not "final".

In Wisconsin an action is commenced by the service of summons (Wis. Stats. (1957), § 262.01), and it is not necessary to serve a copy of the complaint with the summons (Wis. Stats. (1957), § 262.05). Appellants, prior to service of a complaint, moved to quash service of summons, whereupon affidavits were received and testimony heard by the trial court. Upon denial of the motion to quash, appellants immediately appealed to the Wisconsin Supreme Court, which affirmed. The appeal was taken pursuant to Wis. Stats. (1957), § 274.33(3) which makes many interlocutory and intermediate orders appealable when made, including all that decide a question of jurisdiction.[1] The fact that Wisconsin allows an immediate appeal whenever a lower court enters an order which decides a question of jurisdiction, does not make the decision of the Wisconsin Supreme Court "final" under 28 U.S.C. § 1257(2).

The ultimate test of finality is formulated by this Court, not by the law of the state wherein the judgment is rendered. *Department of Banking v. Pink*, 317 U.S. 264, 268 (1942); *Richfield Oil Corp. v. State Board*, 329 U.S. 69,

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[1] § 274.33(3) reads in part:

"The following orders when made by the court may be appealed to the supreme court:

* * *

"[3] When an order grants, refuses, continues or modifies a provisional remedy or grants, refuses, modifies or dissolves an injunction, sets aside or dismisses a writ of attachment, grants a new trial or sustains or overrules a demurrer, decides a question of jurisdiction, determines an issue submitted under s. 263.225, or denies an application for summary judgment, * * *."

72 (1946); *Cole v. Violette,* 319 U.S. 581, 582 (1943). This Court has said that the state court judgment must be final in two respects to be within the appellate jurisdiction under 28 U.S.C. § 1257(2). "It must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of a final court." *Market Street R. Co. v. Comm.,* 324 U.S. 548, 551 (1945). More specifically, it is generally held that the state court judgment must be final as to all parties, *Meagher v. Minnesota Thresher Co.,* 145 U.S. 608, 611 (1892), and as to all legal and factual issues, *Republic Natural Gas Co. v. Oklahoma,* 334 U.S. 62, 68 (1948).

Here the Wisconsin Supreme Court merely affirmed an order denying a motion to quash summons in so far as it purported to confer jurisdiction over the Sales Corporation. There has been no objection to service upon Kelly, individually, who is also a party. Thus the judgment does not and could not determine the rights of all parties. Furthermore, at present no pleadings are on file and no issues, other than jurisdiction over the Sales Corporation, have been raised or decided. The effect of the Wisconsin Supreme Court decree is simply to allow the case to proceed to trial on the merits, and then only if Prime files a complaint setting forth a cause of action, to which appellants may respond by the way of motion or answer.

Under these circumstances, it is quite obvious that the judgment appealed from is not an "effective determination of the litigation", but is merely interlocutory in nature. Therefore, the judgment is not "final" for the purposes of appeal under 28 U.S.C. § 1257(2).

2. The federal question sought to be reviewed was not timely or properly raised.

Appellants contend (Appel. Brief p. 8) that the federal question under consideration was "expressly" raised in their briefs on appeal to the Wisconsin Supreme Court. In their original brief the only reference made to the issue is the argument that "a contrary ruling such as affirming the trial court would violate the rights of the Sales Corporation under the Federal Constitution" (R. p. 28). In their reply brief (R. p. 157) the contention is made that the facts "cannot on this record constitutionally support a finding that the Graham-White Sales Corporation was doing business in Wisconsin on said dates, a prerequisite to jurisdiction."

Aside from the fact that briefs and oral arguments before state courts are not ordinarily part of the record before the Court and cannot be used to establish that a federal question was raised[2], suffice it to say that an attack upon a statute on the ground that it is in violation of the "Constitution of the United States", without further specification, does not properly raise a federal question. *Herndon v. Georgia,* 295 U.S. 441, 442-443 (1935); *Capital City Dairy Co. v. Ohio,* 183 U.S. 238, 248 (1902). As stated in *Oxley Stave Co. v. Butler County,* 166 U.S. 648, 655 (1897), "the jurisdiction of this court to reexamine the final judgment of a state court cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing a case here from such court intended to assert a Federal right".

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[2]See: *Lynch v. New York,* 293 U.S. 52, 54 (1934); *Live Oak Ass'n. v. R. R. Comm.,* 269 U.S. 354, 358-359 (1926); and *Zadig v. Baldwin,* 166 U.S. 485, 488 (1897).

The federal question was first "expressly" raised, if at all, by appellants in their motion for rehearing and the brief in support thereof before the Wisconsin Supreme Court (R. pp. 175, 180). The Wisconsin Court denied the motion for rehearing without referring to the federal question (R. p. 197). Thus as in *Herndon v. Georgia,* 295 U.S. 441, 443 (1935), "The federal question was never properly presented to the state supreme court unless upon motion for rehearing; and that court then refused to consider it. The long established general rule is that the attempt to raise a federal question after judgment, upon a petition for rehearing, comes too late, unless the court actually entertains the question and decides it." See also *Radio Station WOW v. Johnson,* 326 U.S. 120, 128 (1945). Furthermore, the present case does not fall within the exception to this rule, namely, that the question first arose from an unanticipated disposition of the case at the close of the proceedings in the highest state court. See *Saunders v. Shaw,* 244 U.S. 317, 320 (1917). It can hardly be argued that appellants were not bound to anticipate the decision of the Wisconsin Supreme Court or lacked opportunity to assert the federal question when the Court merely affirmed the findings of the trial court.

But assuming arguendo that appellants did "expressly" bring the federal question sought to be reviewed to the attention of the Wisconsin Supreme Court, the record fails to disclose that the question was raised in any manner whatsoever before the trial court. In Wisconsin questions as to constitutionality of a statute not raised in the trial court cannot be considered by the state Supreme Court. *Dostal v. Magee,* 273 Wis. 228, 77 N.W. (2d) 604, 607 (1956). This Court has held that when required by state practice, the federal question must be raised before the trial court in order to confer jurisdic-

tion on appeal to this Court under 28 U.S.C. § 1257(2). *Mutual Life Ins. Co. v. McGrew,* 188 U.S. 291, 308-309 (1903); *Edelman v. California,* 344 U.S. 357, 358 (1953); *Bailey v. Anderson,* 326 U.S. 203, 206 (1945); *Memphis Gas Co. v. Beeler,* 315 U.S. 649, 651 (1942).

Therefore, the federal question sought to be reviewed was not properly or expressly raised in the courts below, and, if raised at all, it was presented too late to be considered by either the Wisconsin Supreme Court or by this Court.

3. The federal question was not passed on by the Wisconsin Supreme Court.

Appellants attempt to avoid a dismissal on the grounds that the question was not timely or properly raised by maintaining that the Wisconsin Supreme Court "passed upon and decided the issue" to the extent required under 28 U.S.C. § 1257(2) (Appel. Brief p. 8). It has been held that where the highest state court expressly considers and determines the question, this Court will assume that the federal issue was properly raised. *Saltonstall v. Saltonstall,* 276 U.S. 260, 267-268 (1928); *Charleston Ass'n. v. Alderson,* 324 U.S. 182, 185-186 (1945).

In its opinion the Wisconsin Supreme Court, applying the tests of "doing business" for the purposes of jurisdiction over a foreign corporation set forth in *International Shoe Co. v. Washington,* 326 U.S. 310 (1945), said "The facts in this case do not warrant any suggestion of 'unfair play'" (Appel. Appex. p. 16). Appellants apparently contend that this statement by the Wisconsin Court amounts to a determination of the federal question now raised (Appel. Brief p. 8).

However, it is obvious that the Wisconsin Supreme Court in making the statement was saying only that the present case comes within the "liberalized" test of "doing business" as defined in *International Shoe* (see Appel. Appex. pp. 15-16). There is no indication that the Court expressly considered and determined the federal question as now presented. This is apparent from the manner in which the Court stated the only issue involved. It said (Appel. Appex. p. 14):

> "The question is whether at the time of the service of the summons in this action on D. Allcott Kelly, as president of the Graham-White Sales Corporation — May 24, 1957 or June 3, 1957 — the corporation was doing business in Wisconsin."

It then held that the activities of the Sales Corporation constituted "at least the 'very little more' than the maintenance of an office for convenience in the solicitation of orders, required under the rule" stated in an annotation in 146 A.L.R. 961 (see Appel. Appex. pp. 16, 18).

This holding is fully supported by the record and acts as an adequate independent non-federal ground, sufficient to bar review. *Radio Station WOW v. Johnson,* 326 U.S. 120, 129 (1945). Furthermore, even if the statement of the Wisconsin Court relied on by appellants is viewed as a determination of the federal issue, though not properly raised, there has been no showing that the statement was necessary to the determination of the cause, or that the judgment as rendered could not have been given without deciding it. See *Honeyman v. Hanan,* 300 U. S. 14, 21 (1937). Therefore, the fact that the Court below applied the doctrine of *International Shoe* and suggested that the facts "do not warrant any suggestion of 'unfair play' ", does not cure appellant's failure to timely and properly raise the federal question now sought to be reviewed.

Appellants further maintain that in Wisconsin any challenge by a foreign corporation to delivery of a summons on the basis that the foreign corporation was not doing business in Wisconsin "necessarily draws in question the validity of the statute on the ground of its being repugnant to the Constitution of the United States if applied to the challenging corporation" (Appel. Brief p. 6), and that "any decision of a Wisconsin Court holding that a foreign corporation 'is doing business in Wisconsin at the time of service' * * * *necessarily* draws in question the validity of the statute under federal due process and decides in favor of its validity" (Appel. Brief pp. 7-8). In effect, appellants take the position that whenever the highest state court renders a decision upholding service of process and relying upon *International Shoe,* it is automatically appealable under 28 U.S.C. § 1257(2), even though the federal question of validity of the state statute as applied is not properly raised or decided. This represents much too broad a view of this Court's jurisdiction on appeal. It may be that an appeal will lie even though the state court is not explicit in overruling a timely challenge on federal grounds to the validity of the state statute, but the challenge itself must be explicit. And appellant's contention is entirely inconsistent with the fundamental rule that the federal claim and the grounds therefor must be brought to the state court's attention, *Bryant v. Zimmerman,* 278 U.S. 63, 67 (1928), and/or passed on, neither of which was done here.

We therefore submit that the federal question now before the Court was neither considered nor decided by the Wisconsin Supreme Court and appellants' contentions to the contrary are unsound.

4. A substantial federal question is not presented.

It has been fully demonstrated above that appellants are not properly before this Court. In addition, it can be argued that, in any event, the question as phrased by appellants (Appel. Brief p. 3) provides no basis for review because it does not draw into question the validity of the state statute. See and compare: *Philadelphia & Reading C. & I. Co. v. Gilbert,* 245 U.S. 162, 165-166 (1917) and *Dahnke-Walker Co. v. Bondurant,* 257 U.S. 282, 289, 299 (1921). However, regardless of any of the above, the actual question presented (see pp. 2-3, supra) however worded is insubstantial and that alone is cause for dismissal of the appeal and denial of certiorari. *Zucht v. King,* 260 U.S. 174, 176 (1922); *Palmer Oil Corp. v. Amerada Corp.,* 343 U.S. 390, 391 (1952).

Appellants base their argument that the question is substantial on two grounds, (1) that the "Wisconsin courts did not and could not find on the basis of this record that appellee's cause of action arose out of contacts in Wisconsin," and (2) that the record fails to disclose "anything inconsistent with the contention that the Sales Corporation had ceased doing business in Wisconsin before delivery of the summons to Kelly" (Appel. Brief p. 9) .

As to the first, the fact that the Wisconsin courts did not find that the cause of action arose out of corporate activities in Wisconsin is of no significance. We repeat, no complaint setting forth a cause of action is yet on file. If and when pleadings are filed it may very well appear that the cause of action arose out of Wisconsin activities (see affidavit of Vaughan, R. pp. 39-41). This in and of itself would be sufficient to support service of summons under Wis. Stats. (1957), § 262.09(4)(b). Further-

more, it cannot be said that the activities of the Sales Corporation in Wisconsin failed to represent substantial contacts with the state, regardless of where the cause arose.

As indicated by the trial court, it is clear that the President of the Sales Corporation was personally served within the state. We are not dealing with the case of service upon a minor sales representative or a subordinate official (Appel. Appex. p. 19). Nor are we dealing with a situation where the corporation was served in a state other than that where suit was commenced. It is undisputed that Kelly, the President, and Miss Peplowski, the only known employees of the Sales Corporation, resided in Wisconsin and were actively engaged in the pursuit of business activities on behalf of the Sales Corporation in the state. A suite of offices was rented in Milwaukee in the name of the Sales Corporation under a relatively long term lease. The suite was equipped with a typewriter and office furniture and was occupied by personnel. Telephone service was installed in the leased premises with listings under "Railroad Supplies" in the classified section of the local telephone book. Prospective callers were referred to Kelly's Milwaukee residential phone number if no answer was received at the office listing. Numerous phone calls, both local and long distance, were made and received, and telegrams sent. Significantly, the only known physical office space rented and occupied by the Sales Corporation was that located in Milwaukee. Moreover, an advertisement published and circulated to the trade expressly directed *all* inquiries to the Milwaukee office, and Kelly admitted that he used the office and telephone service in handling such inquiries.

The trial court found that "The creation of a base of operations in a leased office, the installation and actual use of phone service and the advertising of the corpora-

tion's presence strongly suggest its availability for commercial activity in Milwaukee" (Appel. Appex. p. 19). The Wisconsin Supreme Court said that "The Sales Corporation was ready to accept, and had equipped and manned itself so that it could accept, and act upon, any order or business which might come into the office" (Appel. Appex. p. 17). In addition to all this, Kelly, a Wisconsin resident and President of the Sales Corporation and former trusted employee of Prime, and a man highly experienced and successful in the field of selling railroad equipment, organized the Sales Corporation and directed all its affairs. It must therefore be concluded that, under the circumstances above recited, the Sales Corporation had ample contacts with the state to allow service of summons upon its President in Wisconsin without offending the traditional notions of fair play. *International Shoe Co. v. Washington,* 326 U.S. 310, 317-320 (1945); *McGee v. International Life Ins. Co.,* 355 U.S. 220 (1957). And this is so whether or not the record at present indicates that the cause of action arose out of the corporation's activities in the state of the forum. *Perkins v. Benquet Mining Co.,* 342 U.S. 437, 445-448 (1952).

Secondly, the argument that the Sales Corporation ceased doing business in Wisconsin before delivery of summons to Kelly was fully argued and rejected by both courts below. The trial court after hearing testimony and receiving evidence found that "The record fails to support this position" (Appel. Appex. p. 20) and the upper court agreed (Appel. Appex. p. 17, 18). Both courts emphasized that there was no effort to close the office or end the lease, or to discontinue the telephone service (Appel. Appex. pp. 17, 20). Furthermore, although the Sales Corporation advised customers to direct all inquiries to the Milwaukee office, there is no evidence of any pub-

lication to the trade advising that the Milwaukee office was closed and that inquiries should be addressed elsewhere (Appel. Appex. p. 18). These facts plus the affidavits of the Secretary and of the President of Prime (R. pp. 46-55; 67-71; 71-76) fully support the finding that the Sales Corporation at the time summons was served was ready and equipped to accept, and act upon, any order or business which might come into the office (Appel. Appex. p. 17). Obviously, appellant's contention that the record fails to disclose anything inconsistent with their assertion that the Sales Corporation had ceased doing business in Wisconsin by May, 1957 is unjustified and unsound.

Therefore, this court is confronted with a decision of the Wisconsin Supreme Court which is not only consistent with due process as defined by this Court, but is fully supported by the evidence and case law. Viewed in this manner, there is little doubt that if appellants raise a federal question, they present one of no substance and absolutely devoid of merit.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the appeal should be dismissed, and certiorari denied.

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